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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. 5:22-cv-00949-KK-(SHKx)

Assigned for All Purposes to:
Hon. Kenly K. Kato – Courtroom 3

**COUNTY DEFENDANTS’
OPPOSITION TO PLAINTIFFS’
MOTION IN LIMINE NO. 3 TO
EXCLUDE EVIDENCE DISCLOSED
OR PRODUCED AFTER FACT
DISCOVERY CUT-OFF**

Date: May 15, 2025
Time: 10:30 a.m.
Dept.: 3

Trial Date: June 2, 2025

Complaint filed: 06/07/2022
FAC filed: 10/18/22
SAC filed: 01/13/23
TAC filed: 05/12/23

L.C., a minor by and through her
guardian *ad litem* Maria Cadena,
individually and as successor-in-interest
to Hector Puga; I.H., a minor by and
through his guardian *ad litem* Jasmine
Hernandez, individually and as
successor-in-interest to Hector Puga;
A.L., a minor by and through her
guardian *ad litem* Lydia Lopez,
individually and as successor-in-interest
to Hector Puga; and ANTONIA
SALAS UBALDO, individually,

Plaintiffs,

vs.

STATE OF CALIFORNIA; COUNTY
OF SAN BERNARDINO; S.S.C., a
nominal defendant; ISIAH KEE;
MICHAEL BLACKWOOD;
BERNARDO RUBALCAVA;
ROBERT VACCARI; JAKE ADAMS;
and DOES 6-10, inclusive,

Defendants.

I. INTRODUCTION

Plaintiffs' Motion in Limine to exclude evidence disclosed or produced after the discovery cut-off aims to shield the jury from highly relevant and probative information that directly undermines Plaintiffs' claims and requests for damages. The timing of the production is substantially justified and harmless, as Plaintiffs themselves had knowledge and equal access to these records which detail Mr. Puga's extensive, violent, criminality, which Plaintiffs disavowed knowledge of during deposition, prompting Defendants to obtain the at issue records.

These records are critical to assessing Plaintiffs' credibility, rebutting their wrongful death and loss of familial relationship claims and establishing liability. It is anticipated that Plaintiffs will argue that Mr. Puga was scared or confused during the pursuit, standoff, and gun fire exchange with police; yet, Mr. Puga's criminal record reflects a near identical prior pursuit, standoff, and gun fire exchange with police, revealing a pattern of calculated, confrontational behavior and familiarity with police procedures. Excluding this evidence would unfairly prejudice Defendants and deny the jury essential context on Plaintiffs' credibility, damages, and Mr. Puga's culpability. Finally, Plaintiffs are unable to show any prejudice, let alone any prejudice that outweighs the materials' probative value. And, exclusion of the records would be a harsh remedy and unduly prejudice Defendants.

20 II. ARGUMENT

21 To oppose a motion to exclude evidence disclosed or produced after discovery
22 cut-off, a party must show the delay was substantially justified or harmless under
23 Federal Rule of Civil Procedure 37(c)(1).

A. Delay was Substantially Justified

Substantial justification exists when the party failing to disclose can provide a reasonable explanation for the delay. The at issue subpoena records to the third parties was issued on December 6, 2024, as soon as their need became apparent, still

1 nearly a month before the January 2, 2025, discovery cut-off but regrettably not
2 within the 45-days before the cut-off as directed in the Court’s civil trial scheduling
3 order. (Margolies Decl. ¶2). Courts have found substantial justification in situations
4 where the delay was due to circumstances beyond the party's control, such as
5 difficulties in obtaining necessary information from third parties or changes in
6 representation and the Court considers the opposing side’s delay in objecting. (See,
7 *Babcock v. Rezak*, 2002 WL 31654995 (2002) at ¶ 6, Court found failure to disclose
8 an expert timely was substantially justified based on new counsel, having difficulty
9 obtaining files, and because defendant waited a month and a half after disclosure to
10 file motion in limine objecting). Here, Defendants have substantial justification for
11 the delay: Defendants could not have anticipated the need for these records earlier
12 and acted promptly to obtain them from third parties once their necessity became
13 clear. Moreover, Plaintiffs waited over four months after learning of the December
14 2024 subpoenas to raise any “timeliness” concerns, effectively waiving their
15 objection and conceding the adequacy of their disclosure.

16 Plaintiffs Block Earlier Depositions of Plaintiffs

17 As admitted by Plaintiffs in their moving papers, Mr. Puga’s extensive violent
18 criminal history was disclosed and available to all parties in October 2023 when
19 “Defendants produced Mr. Puga’s criminal history, including his prior arrests and
20 encounters with law enforcement and his convictions and periods of incarceration.”
21 (Dkt. #136, 5:16-20). The need for the subpoenaed records became apparent after
22 the first deposition of Plaintiff, wherein Plaintiff Antonia Salas Ubaldo, Decedent’s
23 mother, feigned ignorance as to Mr. Puga’s well documented violent criminal
24 conduct, despite testifying they were very close, attended trials and visited him in
25 jail, and each Plaintiff thereafter also denied or minimized their knowledge thereby
26 necessitating the need for more detailed criminal records to address Plaintiffs’
27 credibility. (Margolies Decl. ¶ 3). Importantly, Plaintiffs blocked Defendants’

1 efforts to depose a single Plaintiff before December 3, 2024, insisting no Plaintiff
2 would appear until all Defendant depositions concluded in late November, despite
3 Defendants' attempts to schedule Plaintiffs depositions as early as October.
4 (Margolies Decl. ¶ 4, Ex. A, October 18, 2024, email thread and NODs).

5 Plaintiffs' Deposition Testimony which Necessitated the Records

6 At Plaintiffs' earliest deposition date on December 3, 2024¹, Plaintiff Ms.
7 Ubaldo repeatedly denied knowledge of Mr. Puga's violent history, despite claiming
8 they were "very close," and that she attended court and trials for him, making it clear
9 Defendants needed more detailed criminal records to address her credibility.
10 (Margolies Decl. ¶ 5, Ex. B Ubaldo CT 88:14-22).

11 Plaintiff Antonia Ubaldo

12 Q: Can you tell me any of the reasons that Hector has been arrested?

13 A: I don't remember why he was arrested. I had been in court for him, but I
14 don't remember why.
(Id. at 50:9-12).

15 Q: Did he ever tell you the reasons that he was in jail?

16 A: I don't remember.
17 (Id. at 52:21-23).

18 Q: So did Hector ever get arrested as a result of this fight that you have been
19 describing? "Yes," "no," or "I don't know"?

20 A: No.

21 Q: Has Hector ever been arrested for any type of domestic violence?

22 A: I don't remember if he was.
(Id. at 49:14-20).

23 Q: Did you ever learn during that trial that he beat her with a gun?

24 A: No.
(Id. at 94:24-95:1).

25
26 ¹ Plaintiffs A.L.'s GAL Lidia Lopez was deposed on December 4, 2024; L.C.'s GAL Maria
27 Cadena's and I.H.'s GAL Jasmine Hernandez on December 11, 2024. And, Mr. Puga's sisters
28 Gabriela Salas and Nancy Juarez were deposed on December 19, 2024. (Margolies Decl. ¶ 4)

1 Q: My question was a little more specific. My question -- well, let me back
2 up. You were aware that Hector was sentenced to seven years in prison as a
3 result of the incident between him and Yobanna. Is that correct?

4 A: No.

5 (Id. at 95:10-15).

6 After these denials, Defendants same day requested a rush order and the
7 subpoenas to the facilities were served on December 6, 2024 (Margolies Decl. ¶ 6).

8 In addition, the three biological mothers and guardian ad litem of each of the
9 minor Plaintiffs, all denied or feigned knowledge of Mr. Puga's violent criminal
10 history, despite one who specifically sought a restraining order as she "feared for
11 [her]self and family" because Mr. Puga had "threatened to kill [her]." (Margolies
12 Decl. ¶3 and ¶10, Ex. F, Cadena Restraining Order COSB9583).

13 Plaintiff I.H.'s GAL Jasmine Hernandez

14 Q: Did you ever talk to Hector about what happened that day when he shot at
15 the police? [referring to the 2015 shooting with LAPD]

16 A: No.

17 Q: Why not?

18 A: I believed his affairs were his affairs and my affairs were my affairs.

19 Q: If I understand you correctly, it's fair to say that you never talked to Hector
20 about the reasons that he was running from police or shooting at police?

21 A: No. He would never discuss that with me.

22 (Margolies Decl. ¶ 7, Ex. C, Hernandez CT 34:21-35:5).

23 Plaintiff A.L.'s GAL Lidia Lopez

24 Q: Were you aware that Hector had been arrested before he was in a
25 relationship with you?

26 A: Not that I recall.

27 Q: Did he ever tell you that he had been arrested?

28 A: Yeah, but I don't know why.

Q: Did you ever ask him why he had been arrested in the past?

A: No.

Q: Were you concerned at all that he had been arrested previously?

A: No.

Q: Why not?

1 A: I just didn't think of asking him why. I mean, he was out, and that's all I
2 cared for.

3 Q: Were you aware that he had been in jail in prison?

4 A: Not that I recall.

5 Q: Did Hector ever tell you that he had spent time in prison?

6 A: No.

7 Q: Is me asking the question the first time you learned that he had previously
8 been to prison?

9 A: I mean, I've heard it around, but that's as much as I know about it.

10 Q: And what do you mean you heard it around?

11 A: I mean, people talk, Facebook. I mean, there's internet.

12 (Margolies Decl. ¶ 8, Ex. D, Lopez CT 43:23-44:25).

13 Plaintiff L.C.'s GAL Maria Cadena's

14 At deposition, Plaintiff L.C.'s GAL Maria Cadena also feigned ignorance,
15 specifically as it relates to Mr. Puga's history of domestic violence despite herself
16 filing a restraining order against him in which she specifically advised the Court of
17 Mr. Puga's violence and past domestic violence convictions against other women.

18 Q: Do you know if he ever spent any time in prison or jail?

19 A: No.

20 (Margolies Decl. ¶ 9, Ex. E, Cadena CT 23:18-20).

21 Q: When you were with Hector, were you aware of any time that he had been
22 arrested?

23 A: No.

24 Q: Were you aware -- or are you aware that he's ever been arrested of
25 domestic violence?

26 A: No.

27 (Id. at 22:16-21).

28 In the restraining order Ms. Cadena's sought and obtained, she detailed how
Mr. Puga had "threatened to kill [her]... [how] he ha[d] been stocking [sp] [her]....
[how his] behavior [was] irrational and scary" and she fear[ed] for [her]self and
family." (Margolies Decl. ¶ 9, Ex. F, Cadena Restraining Order COSB9583).
Further, she states that Mr. Puga "has a history of past violence against another
women... is currently on summary probation [and] was convicted for 'Domestic

1 Battery,’ ‘Contempt of Court,’ and 148(A)(1) PC Misdemeanor.” (Id.).

2 Defendants had no choice but to seek these records still a month before the
3 discovery deadline and provided Plaintiffs copies as requested and as detailed below.

4 Plaintiffs Objected and then Withdrew their Objection to the Records

5 Following the above depositions, on December 17, 2024, in direct response to
6 duly issued subpoenas, Plaintiffs sent “objection letters” to each facility, threatening
7 that because they intended to file a motion to quash, the facilities were prohibited
8 from releasing any documents absent court approval. (Margolies Decl. ¶ 11, Ex. G,
9 pgs. 5-15). In swift response, Defendants sent a detailed correspondence to
10 Plaintiffs advising that unless the improper objection letters were immediately
11 withdrawn, Defendants would seek ex parte relief, including an order compelling
12 production and/or extending the discovery cut off to resolve the issue. (Id. at pgs. 2-
13 4). Specifically, Defendants advised Plaintiffs:

14 ... these records are proportionate... Given that Mr. Puga’s family have all
15 testified and essentially claimed ignorance of his criminal history, drug history
16 or alcohol history, we were left with no choice but to seek out these records
17 directly from the entities to expose these credibility issues and to introduce
18 evidence of Mr. Puga’s lifestyle. ...there is no other means to obtain this
19 information that Puga’s mother and girlfriends deny exist. (Id.).

19 The following morning, Plaintiffs responded:

20 ...we do recognize that this issue may be a close call in terms of wrongful
21 death damages. Accordingly... we are willing to withdraw our objections
22 and send out letters notifying the agencies so, if you are willing to supply us
23 with a copy of the records once you receive them.

24 (Margolies Decl. ¶ 12, Ex. H re Plaintiffs agreement to withdraw objections).

25 Defendants agreed to provide copies and Plaintiffs withdrew their objections
26 to each facility. (Margolies Decl. ¶¶ 13 and 14, Ex. I and Ex. J). And, Defendants
27 promptly provided Plaintiffs with all records upon receipt. (Margolies Decl. ¶ 15).

1 Notably, Plaintiffs’ only objection to the subpoenas was based on relevance
2 and at no point did they raise any concern regarding timing or violation of the
3 Court’s scheduling order. (Margolies Decl. ¶ 16). Had Plaintiffs raised any
4 timeliness concerns back in December 2024 when the subpoenas were issued,
5 Defendants would have immediately, as stated, filed an Ex Parte to seek Court
6 intervention and fully brief the issue. (Id.). Relying on Plaintiffs’ agreement to
7 withdraw their objections provided they receive copies of the materials, Defendants
8 believed this matter was settled. (Id.). In fact, several of Defendants’ experts relied
9 on these records and authored reports reflecting the same and at no time did
10 Plaintiffs offer any rebuttal or objection to these records until the instant motion in
11 limine. (Id.).

12 **B. Delay was Harmless**

13 When considering whether a violation of Rule 26(a) is justified or harmless,
14 courts analyze the following four factors: “(1) the prejudice or surprise to the party
15 against whom the testimony is offered; (2) the ability of the party to cure the
16 prejudice; (3) the extent to which introducing such testimony would disrupt the trial;
17 and (4) the moving party's bad faith or willfulness.” *Woodworker’s Supply, Inc. v.*
18 *Principal Mut. Life Ins. Co.*, 170 F.3d 985, 993 (10th Cir. 1999).

19 First, Plaintiffs were neither prejudiced nor surprised by the discovery as they
20 acknowledged in their moving papers that Mr. Puga’s violent criminal history
21 “including his prior arrests and encounters with law enforcement and his convictions
22 and periods of incarceration” were disclosed as early as October 2023. (Dkt. #136,
23 5:16-20). Courts have found that delays in disclosure do not cause prejudice when
24 the opposing party had access to the materials. (See, *Vista Food Exch., Inc. v.*
25 *Comercial De Alimentos Sanchez S de R L de C.V.*, 627 F. Supp. 3d 408, 417
26 (S.D.N.Y. 2022) where the court found that a two-week delay in disclosure did not
27 cause prejudice, especially since the opposing party had many of the documents in

its possession for years; see also, *Sosa v. Dollar Gen. Corp.*, No. CV 15-1790, 2016 WL 8266425, at *2 (E.D. La. Apr. 11, 2016, where the Court concluded that plaintiffs could not claim the records were uniquely within Defendant's control or otherwise previously unavailable to plaintiffs nor did plaintiffs adequately state what prejudice they faced from the late disclosure given that they had access to the records for a full month prior to trial.) Similarly, Plaintiffs had knowledge of these records since October 2023, they were not uniquely in Defendants' control, Plaintiffs could have subpoenaed earlier, and the bulk were produced in January 2025, five months before trial; accordingly, no prejudice or surprise resulted.

Second, any potential prejudice, though denied by Defendants, was cured when Defendants promptly provided Plaintiffs with all subpoenaed records upon receipt, as Plaintiffs requested several months ago. (Margolies Decl. ¶ 15). Third, the discovery will not disrupt the trial as only relevant information will be addressed². (Margolies Decl. ¶ 17). Fourth, Defendants acted in good faith. Subpoenas were requested within the discovery cut-off, though admittedly after the Court's civil trial scheduling order. However, they were requested only after their need became apparent following Plaintiffs delayed depositions wherein, they denied knowledge of Mr. Puga's well documented criminal history. Defendants sought the records promptly after the first Plaintiff deposition and provided them to Plaintiffs as soon as they were received. (Margolies Decl. ¶ 15).

² While Defendants maintain that all the records at issue should not be excluded for the reasons stated herein, Defendants do not intend to use several of the records. In particular, County Defendants do not intend to use the following materials:

- Los Angeles County Sheriff's Department records from Temple Street, produced on January 15, 2025 (17 pages)
- Los Angeles County Sheriff's Department Twin Towers Correctional Facility Records, produced on January 17, 2025 (17 pages)
- CDCR Archives Incarceration records, produced on January 17, 2025 (8 pages)
- East Angeles County Sheriff's Station records, produced on January 24, 2025 (8 pages)

**C. Disclosures are Relevant and Probative to Liability; their Exclusion
Would be a Harsh Remedy and Unduly Prejudice Defendants**

Finally, as is always critical, the materials are both relevant and probative and exclusion would be a harsh remedy, irreparably prejudicing Defendants. Mr. Puga's are directly relevant to his liability and apportionment of fault. The records show this was not his first encounter with law enforcement; he had a history of violent felonies, prison time, and conduct consistent with his actions during the incident. (Margolies Decl. ¶ 18). As Defendants' experts will testify, Mr. Puga's behavior fits a clear pattern. Two months prior, per the publicly available criminal complaint, Mr. Puga was charged in the Central District for being a felon in possession of a loaded AR-15 assault rifle and ammunition. (Margolies Decl. ¶ 19, Ex. K, Criminal Complaint). Two days before the incident, he fled a police stop, and was seen by his sister with a gun matching the description of the gun he fired at officers. (Margolies Decl. ¶ 20). And the night before the incident, he shot at a stranger on the freeway; hours later, he led police on a high-speed chase through residential areas before his vehicle was disabled. (Margolies Decl. ¶ 21). After failed negotiations and non-lethal attempts, he exited, lured officers close, and opened fire. These events mirror a 2015 incident, previously disclosed, in which he led police on a pursuit and then fired at them. (Margolies Decl. ¶ 22). The additional subpoenaed at issue records and disclosures are relevant and probative, and excluding them would unduly prejudice Defendants for the reasons stated herein.

D. Disclosures are Relevant and Probative to the Claims and Damages

Simply, Plaintiffs cannot have it both ways: Plaintiffs may not seek millions of dollars and then block any information related to who Mr. Puga was. Introduction of a Decedent's criminal history is also grounded in basic notions of fairness and the recognition that litigation is a search for the truth. *See, Agosto v. Trusswal Systems Corp.*, 142 F.R.D. 118, 120 (E.D. Pa. 1992) ("It is Plaintiff's choice to pursue claims

1 that necessitate the introduction of life expectancy information and basic fairness
2 dictates that Plaintiff should not be allowed to make a potentially large recovery
3 against [the defendant] based on an average life span when, in reality, Plaintiff may
4 well have a shorter than average life expectancy.”); *see also*, *Lewis v. District of*
5 *Columbia*, 793 F.2d 361, 363 (D.C. Cir. 1986) (affirming district court’s order
6 admitting evidence of past drug use *and arrests* when the evidence was probative in
7 aiding the jury to fairly measure the extent of damages for the alleged police
8 “excessive force” claim and that its prejudicial effect did not substantially outweigh
9 its probative value). Furthermore, Mr. Puga’s prior incarcerations are relevant to
10 damages, as Defendants’ expert will testify that, had he survived, he would likely
11 have been sentenced to life in prison, significantly limiting the “society and
12 comfort” he could have provided to Plaintiffs. (Margolies Decl. ¶ 23). (*Peraza v.*
13 *Dalmeter*, 722 F.2d 1455, 1457 (9th Cir. 1984); *Castro v. Cty. of Los Angeles*, No.
14 2:13-cv-06631, 2015 WL 4694070, at *4 (C.D. Cal. 2015).

15 E. CONCLUSION

16 Accordingly, Plaintiffs’ Motion in Limine No. 3 to exclude the above
17 evidence should be denied.

18
19 DATED: April 24, 2025

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21
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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for County Defendants certifies that this brief contains 3,026 words, which:

X complies with the word limit of L.R. 11-6.1.

☐ complies with the word limit set by court order dated ____.

DATED: April 24, 2025

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